IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

OP.No. 13053 of 1999(D)

PETITIONER:

MANGALAM PAINTS, THAMMANAM,
PALARIVATTOM.P.O., COCHIN - 682025,
REPRESENTED BY ITS MANAGING PARTNER,
DR. M.I. ITTY.

BY ADV. SRI.M.V.JOSEPH.

RESPONDENTS:
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1. **PRESIDING OFFICER,**
   EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL,
   VIITH FLOOR, 60, SKYLARK BUILDING,
   NEHRU PLACE, . DELHI - 110019.

2. **THE REGIONAL PROVIDENT FUND COMMISSIONER,**
   SUB REGIONAL OFFICE, KALOOR,
   COCHIN - 682017.

BY ADV. SRI.N.N.SUGUNAPALAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 20971/1999 IN O.P. NO. 13053/1999

DISMISSED

02/08/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER PASSED BY THE R.2.

EXT.P.2: COPY OF THE LIST.

EXT.P.3: COPY OF THE ORDER PASSED BY THE R.1.

EXT.P.4: COPY OF THE MEMORANDUM OF SETTLEMENT.

EXT.P.5: COPY OF THE COMMUNICATION OF THE R.2. DTD. 08/10/96.

EXT.P.6: COPY OF THE LETTER REPLY DTD.15-11-96 SENT BY THE PETITIONER TO THE R.2.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

prv.

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.13053 OF 1999

Dated this the 2nd day of August, 2007

JUDGMENT

Ext.P1 order of enquiry under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 was interfered with partially by the Appellate Tribunal as per the impugned Ext.P3. The Tribunal concluded that there were 20 employees in the establishment as on 31.5.1994 and therefore, the coverage comes from that date. On record before the Section 7 A proceedings was a settlement between the management and the workmen. That is Ext.P4, produced along with a memo and taken on record.

2. The Tribunal interfered with the order under Section 7 A by taking the view that the trainees would not have been brought under coverage and even if that contention of the establishment is accepted, coverage would be from 31.5.1994. This is made on the basis of Ext.P2 (R1 in the statutory proceedings). It is true that, going exclusively by Ext.P2, there were 20 workmen as on

31.5.1994, which also includes V.F.Martin, T.A.Shiju, Kareem K.H. and Sabu Cherian at Sl. Nos.12 to 15 respectively in Ext.P2. The said four persons are referred to by the trade unions and the Management as trainees while entering into Ext.P4 settlement, clause 1 C of which provides that the Management agrees to give those four persons, who are trainees, an increase of Rs.350/- to the stipends drawn by them with effect from 1.4.1996 and they will be taken to have been absorbed on the rolls with effect from that date by treating their stipends as consolidated wages. This means that there was material which clinchingly shows that those four persons were continuing as trainees till 1.4.1996, from which date, the establishment was concededly covered by the Act.

3. On the aforesaid facts and circumstances, it would be illegal to compel the establishment to be brought under coverage of the Act from 31.5.1994, because, at that point of time, applying the very same ratio adopted by the Tribunal regarding the trainees, the establishment had only 16 workmen.

In the result, the impugned orders, to the extent they are against the interest of the establishment, are quashed and it is ordered that the establishment is covered under the EPF & MP Act, 1952, from 31.4.1996. The writ petition is allowed as above. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.13053 OF 1999

JUDGMENT

2ND AUGUST, 2007.

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